

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL A. ALFARO,  
Petitioner,

No. C 08-2114 SI (pr)

**ORDER OF DISMISSAL**

v.

M. S. EVANS, warden,  
Respondent.

Miguel A. Alfaro, currently incarcerated at Salinas Valley State Prison, has filed this pro se action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition challenges his 2006 conviction and sentence in the San Mateo County Superior Court. His petition states that he filed a direct appeal but did not raise in the appeal the same claims he wants to present here. Petition, p. 2, § 8. His petition also states that he did not file state habeas petitions. Id. at 5-6.

Prisoners in state custody who want to challenge either the fact or length of their confinement in federal court by a petition for a writ of habeas corpus are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every issue they seek to raise in federal court. See 28 U.S.C. § 2254(b)(1)(A),(c); Duckworth v. Serrano, 454 U.S. 1, 3 (1981). If available state remedies have not been exhausted as to all claims, the district court must dismiss the petition. See id. at 4-5.

1 The information in the petition discloses that Alfaro's petition is a wholly unexhausted  
2 petition. That is, none of his claims have been exhausted because he has not given the California  
3 Supreme Court a fair opportunity to rule on any of them. The court cannot stay a wholly  
4 unexhausted petition.

5 This action is DISMISSED without prejudice to Alfaro filing a new action after he  
6 exhausts state court remedies. Alfaro is cautioned not to file an amended petition in this action  
7 and not to use the case number for this action because this action is being closed today. When  
8 he files a new petition, he should put no case number on the first page, and should submit it with  
9 the \$5.00 filing fee or a completed in forma pauperis application. At that time, the court will  
10 give the new petition a new case number. Alfaro is urged to act swiftly to exhaust his state court  
11 remedies and immediately file a new federal habeas petition after he receives a decision from  
12 the California Supreme Court to avoid running afoul of the one-year statute of limitations on the  
13 filing of federal habeas petitions, 28 U.S.C. § 2244(d).

14 The clerk shall close the file.

15 IT IS SO ORDERED.

16 DATED: September 29, 2008

  
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SUSAN ILLSTON  
United States District Judge